

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
THIRD REGION**

YOUNG BROADCASTING OF ALBANY, INC.¹

Employer

and

Case 3-RC-11412

**NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES
AND TECHNICIANS-CWA, AFL-CIO**

Petitioner

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, a hearing was held before a hearing officer of the National Labor Relations Board. Pursuant to Section 9(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned. Upon the entire record in this proceeding,² I find that:

The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

The parties stipulated that Young Broadcasting of Albany, Inc. (herein, the Employer) is a Delaware corporation engaged in the operation of a television station at its principal place of business located at 341 Northern Boulevard, Albany, New York. During the 12-month period preceding February 23, 2004, the Employer derived gross revenues in excess of \$400,000 and during the same period advertised national brand products and subscribed to national news

¹ The name of the Employer appears as amended at the hearing.

² Post-hearing briefs were filed by the Employer and the Petitioner, and have been duly considered.

services, including the Associated Press. Based on the parties' stipulation and the record as a whole, I find that the Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.

The parties stipulated, and I find, that National Association of Broadcast Employees and Technicians-CWA, AFL-CIO (herein, the Petitioner) is a labor organization within the meaning of Section 2(5) of the Act.

A question affecting commerce, within the meaning of Sections 2(6) and (7) and 9(c)(1), exists concerning the representation of certain employees of the Employer.

The Petitioner seeks to represent a unit of all full-time and regular part-time news producers, reporters, anchors and desk assistants employed at the Employer's 341 Northern Boulevard, Albany, New York facility. The Petitioner would exclude from the unit the managing editor, the chief meteorologist, the sports director, clerical employees and supervisory employees as defined in the Act, and all other employees. There are seven show producers and one investigative producer, six anchors and six reporters, one investigative reporter and eight desk assistants. There is one assignment manager and one assignment editor.³ There are approximately 31 employees in the petitioned-for unit.

The parties stipulated that Tara Moncheck, the one investigative producer, shall be included in the unit, and shall be eligible to vote in the election. The parties also stipulated that the following individuals are supervisors within the meaning of Section 2(11) of the Act, and as such shall be excluded from the unit, and are ineligible to vote: John McLaughlin, managing

³ The Petitioner would include in the unit the assignment manager and the assignment editor. These classifications were not set forth in the petition. The unit description petition was not amended at the hearing. Nevertheless, the parties fully litigated the question of whether these classifications are supervisory, and the Petitioner stated at the hearing that it would proceed to an election if a unit different from that petitioned for is found appropriate. Therefore, I have considered the evidence regarding the supervisory status of the assignment manager and the assignment editor.

editor; Steve Caparizzo, chief meteorologist; Dan Murphy, sports director, and Rob Puglisi, news director. The parties also stipulated that the position of assistant news director, which is currently vacant, is supervisory and shall be excluded from the unit. There is no dispute in regard to the anchor and desk assistant classifications. With the exception of the investigative reporter, there is also no dispute as to the reporter classification.

Contrary to the Petitioner, the Employer takes the position that the show producers are statutory supervisors, on the basis of their authority to assign and direct the work of other employees, using independent judgment. The Employer asserts that the assignment manager and the assignment editor are supervisors and would exclude them on the same basis as it would exclude the show producers.

The Employer also asserts that the investigative reporter, Priscilla Ress, is a supervisor. The Employer takes the position that Ress assigns and directs the work of a photographer and the investigative producer, using independent judgment, and has authority to hire investigative producers.

Thus, the supervisory issues to be decided are:

- (1) Whether the producers, using independent judgment, assign and responsibly direct the work of employees;
- (2) Whether the assignment manager and the assignment editor, using independent judgment, assign and responsibly direct the work of employees; and,
- (3) Whether the investigative reporter is a statutory supervisor by virtue of her authority to hire investigative producers, and to assign and direct the work of investigative producers and photographers.

The Employer is the local ABC affiliate in the Albany area, and broadcasts 24 hours a day, seven days a week on Channel 10. The broadcast area covers parts of northeastern New York, western Massachusetts and southern Vermont.

The Employer's operation is divided into several departments. The production department is responsible for audio, video and technical matters.⁴ The engineering department is responsible for equipment maintenance and repair. The remaining departments are sales, marketing, finance and news.

The news department produces and airs local news shows, as well as network broadcasts of national and international news. The Employer may obtain video from the ABC network, and also subscribes to CNN for this service. It may choose between these services or use video from both.

The general manager is in charge of the entire station, and the news director reports to her. The news director has ultimate responsibility for the news department, including reporters and anchors, producers, editors, photographers, and assignment editors / managers. Scheduling for the department is done by the news director. Except as discussed below, in connection with the investigative reporter, the news director alone has the authority to hire and fire department employees. The news director is generally at the station from 9:00 a.m. until 6:30 p.m. He has a company cellular phone, and can be reached at any time. The record reveals that the news director is infrequently contacted at home during the night and on weekends (once in the past three or four months).

There are a total of seven producers. Two producers work on the overnight shift. There is one producer who is responsible for both the noon and 5:30 newscasts. There are different producers for the 5:00 p.m., 6:00 p.m., 11:00 p.m. and weekend newscasts.

The overnight shift, which culminates in the 5:00 to 7:00 a.m. local newscast, begins at 11:00 p.m. The two overnight producers are Travis Altman and Nicole Soucy. They have equal

⁴ A unit of the employer's technicians, studio crew and photographer/editors is represented by Local 236 of the International Brotherhood of Electrical Workers.

authority and responsibilities. One is generally in the control room and the other is generally in the newsroom. There are two photographers and one reporter on duty at the start of the overnight shift. One of the photographers operates a live truck and the other is responsible for editing tape as well as photography. The overnight meteorologist arrives at 3:30 or 4:00 a.m. Two anchor reporters arrive at 3:00 a.m. for the 5:00 a.m. show.

The record reveals that the overnight producers decide what stories are to be covered, and they assign the overnight reporter and the photographers to cover them. They have the authority to decide, as news breaks, to alter these assignments and need not contact the news director at home before doing so.

Significant preparation for the 5 a.m. show takes place during the overnight shift. The producers decide what stories will run, in what order, and create a “rundown,” which is essentially a minute-by-minute schedule for the newscast, with stage directions regarding such matters as whether a live feed or tape will be used, which anchor will read the story, whether he or she will be on camera or doing voice-over, whether graphics will be used and if so what kind, and the breakdown of each story. The producers write much of the copy read by the anchors, but they also assign one or both of the anchors to write or rewrite copy from time to time. Two desk assistants arrive at 4:00 a.m., and “rip the scripts.” That is, they sort and collate copy as it comes off the computer system’s printers and give copies of the scripts and the rundown to all who need them. During the show, one desk assistant operates the teleprompter and the other operates a Chyron, which is a character-generating machine.⁵ The record reveals that producers assign desk

⁵ News director Rob Puglisi testified that the producers assign these tasks. The 5:00 p.m. producer, Eric Wohlleber, testified the matter of which desk assistant operates the teleprompter and which one operates the Chyron is determined by the schedule, and he does not assign these tasks. The record reveals that Puglisi schedules the work hours for the department, but it is not clear from the record whether Puglisi or Wohlleber creates the schedule followed by the desk assistants operating this equipment.

assistants to such tasks as retrieving file footage from the station archives and writing or rewriting copy.

The news director decides the basic format of the show, but the producers have, and exercise, discretion in the areas of content and presentation. The producers are able to communicate with the anchors during the show, through earpieces. The producers may deviate from the rundown during the show, and need not check with the news director before doing so.⁶ They may also decide, for example, to expand the amount of time that the meteorologist is on the air, if there is a major storm.

The ABC network program “Good Morning America” begins at 7:00 a.m. There are local station “cut-ins” during the program. Some personnel who arrived during the overnight shift (desk assistants, anchors, the meteorologist) remain and others begin to arrive between 7:00 and 8:00 a.m. The assignment manager, Terry Cavanaugh, works Monday through Friday, 8:00 a.m. to 5:00 p.m. The assignment editor, Mike Hubel, works Thursday through Sunday. Despite the difference in their job titles, the record establishes that the duties performed by Hubel and Cavanaugh are substantially the same, and that they have the same authority. News director Rob Puglisi testified that the desk assistants, reporters, anchors and photographers report to assignment manager Cavanaugh, and that Cavanaugh assigns reporters and photographers to cover particular stories, using his discretion and judgment. On weekends, Puglisi testified, a reporter, a photographer and a desk assistant report to assignment editor Hubel.⁷ The record

⁶ The record as a whole does not support Petitioner’s assertion that a producer may depart from the rundown only when the decision is a “no-brainer.”

⁷ The record does not reveal what, if anything, Hubel does differently on Thursdays, Fridays and Mondays, when both he and Cavanaugh are working. The record also does not establish whether they work the same shift on those days.

does not reflect in any detail how Cavanaugh directs the work of the anchors and desk assistants who “report to” him, or how Hubel directs the work of desk assistants.⁸

Occasionally Cavanaugh consults with Puglisi regarding the assignment of a reporter or photographer, but Puglisi estimated that Cavanaugh makes the decision himself 95 percent of the time. Cavanaugh testified that he makes the assignments based on his knowledge of reporters’ expertise, the kinds of stories that they prefer to work on, and who may be available at a given time. Cavanaugh and Hubel may, on their own authority, change assignments. For instance, if there is breaking news that is considered to be more important than another story, they may redirect a reporter and photographer to the breaking story. Cavanaugh and Hubel have the authority to authorize overtime, and the record reveals that they have exercised that authority.

While news director Puglisi is in the station, he spends most of the time in his office. There are daily news meetings, at 9:00 a.m. and 1:00 p.m., in Puglisi’s office. Puglisi, Cavanaugh, and each of the producers for the noon, 5:00 p.m. and 6:00 p.m. newscasts⁹ attend these meetings. Cavanaugh reports on the assignments he has already made, and the stories to be covered and assignments he has yet to make. There is generally agreement among the group as to Cavanaugh’s assignments. The rundown for the noon newscast emerges from this meeting. The producer of the noon news, Andrea Terry, may deviate from the rundown, if breaking news warrants it. The record reveals that recently, Terry departed from the rundown and went to a network feed to cover a live press conference regarding the trade of a baseball player to the New York Yankees. Terry is also responsible for selecting guests for the “lifestyle” segment of the noon news. She then informs the anchor or reporter, and they are expected to prepare questions

⁸ The Employer argues that the producer’s authority to direct these employees establishes the producers’ supervisory status.

⁹ Andrea Terry, Eric Wohlleber and Jeanne Beattie, respectively. Terry also produces the 5:30 show.

for the interview.¹⁰ Unlike the producers, news director Puglisi is not able to communicate directly with the anchors while they are on the air.

The same individuals who attend the 9:00 a.m. meeting re-assemble for the 1:00 p.m. news meeting. The format of the meeting is similar to the earlier meeting, except that three rundowns (for the 5:00, 5:30 and 6:00 p.m. newscasts) are developed in this meeting. Puglisi testified that the producers decide the length of stories, whether they will feature video, live interviews, and other details.¹¹

It appears from the record that two anchor reporters appear on most, if not all of the Employer's news programs. Puglisi testified that the producer decides which stories will be read by which anchor. Each of the evening newscasts may have different features, or follow a slightly different format. The 5:00 p.m. newscast features the "top ten" stories of the day, while the 6:00 p.m. newscast is a "package" program (fewer, but more in-depth stories). Stories are selected through a collaborative process in the 1:00 p.m. news meeting. The 5:00 p.m. producer, Eric Wohlleber, decides the order of the stories, whether to use video and which source to obtain it from, (ABC or CNN) and may direct a tape editor, a reporter or a desk assistant to get network or archive video for the story. There is a live interview feature called "The Hot Seat." The producer schedules guests and assigns one or both of the anchors to interview them. The record reveals that Puglisi can, and on at least two occasions has, overridden Wohlleber's choice of guests. In each case, the reason was that the guest had been, in Puglisi's judgment, on the show too recently to have them back again. Otherwise, Puglisi testified, Wohlleber has discretion in the selection of guests. For a feature called "People, Places and Things," the producer selects the

¹⁰ On Fridays, the 5:30 news, also produced by Terry, has a segment called "Specialty," in which a particular restaurant is featured. Terry selects the restaurant and directs the anchor to prepare accordingly.

¹¹ Cavanaugh testified, however, that Puglisi has the "final say" over matters discussed at the news meetings.

topic and directs the tape editor to put together video from the networks and/or the archives.

Puglisi also testified that producers direct the work of the graphic artist, by instructing them as to what graphics they should create, and which are to be used on the show.

Eric Wohlleber, the 5:00 p.m. producer, testified that he performs much of the same duties in the same manner as the other show producers, except that his program has the “Hot Seat” segment. Wohlleber testified that he sits in on editorial meetings, schedules the live guests and writes scripts. Wohlleber selects his “Hot Seat” guests with a view to what subjects are timely or currently in the news.¹² Wohlleber testified, consistent with Puglisi’s testimony, that when Puglisi has overridden his choice of guests, the reason has been because the particular guest had been on the program too recently, in Puglisi’s judgment. Wohlleber testified that anchor reporters have “more stature in the newsroom than the producers have.”¹³ Nevertheless, Wohlleber did not contradict Puglisi’s testimony that, once the hot seat guests are selected, he assigns the interviews to the anchor reporters and directs them to prepare accordingly. Regarding the assignment of reporters and photographers, Wohlleber testified that this is “part of...our meetings...most of the time its consensus and its usually random, who’s available, who’s there right now.”¹⁴ Wohlleber testified that the standard length of a “package” in the television industry is one and one-half minutes.¹⁵ However, he acknowledged that he has the authority to shorten or lengthen the package.

Jeanne Beattie, the 6:00 p.m. producer, testified that she did not view herself as giving direction to reporters, and she has never been told that she is their supervisor. At times, Beattie

¹² For example, Wohlleber testified that he was trying to set up an interview regarding the controversial film, “The Passion of the Christ.”

¹³ Wohlleber testified about a segment called “Simple Solutions.” Wohlleber had expressed the opinion to Puglisi that the segment should be dropped, but it was discontinued only when the anchor reporters expressed the same opinion.

¹⁴ Assignment manager Cavanaugh is on duty for most, if not all, of Wohlleber’s shift.

¹⁵ Puglisi, when recalled later in the hearing, disputed this assertion.

testified, reporters ask her to do research for them. When reporters and anchors have gone beyond the time allotted to them in the rundown, Beattie has complained directly to them, and also to Puglisi. In the former case, she testified, she does so by “asking them nicely” to shorten it up (Beattie testified that they do not always comply). On one such occasion, the reporter replied: “I don’t cut it, the editor does.” Beattie testified that she determines which anchor reads which stories by alternating, from day to day, the anchor who reads the lead story. Regarding her direction of the graphic artist, Beattie testified that she seeks the opinion of the graphic artist as to how graphics should look, tells the graphic artist what she wants, and the two of them “discuss it and work through it.” After a recent newscast, Puglisi told Beattie that he did not think that two graphics that she used worked well together, and instructed her not to use that combination again.

Duane Becker produces the 11:00 p.m. newscast, and Christine Harris produces the weekend news shows. Both arrive at 3:00 p.m., and, in addition to producing their shows, they assume the duties of Cavanaugh or Hubel (making assignments to reporters and photographers) when they leave for the day. The record does not specifically reveal whether Becker and Harris, like Cavanaugh and Hubel, may authorize overtime without higher approval.

Following each newscast, the producer(s) prepare a “discrepancy report,” which points out problems encountered during the broadcast, and suggests how they may be avoided in the future. These reports are in the form of e-mail messages to the news department from the producer(s).

Priscilla Ress is the investigative reporter. Ress’ investigative or consumer reports appear three times per week on the 5:00 p.m. newscast. Ress rarely does general assignment reporting. Unlike the other reporters, she has her own office.

A photographer, Ric Easton, and the investigative producer, Tara Moncheck, are assigned almost exclusively to work with Ress. Puglisi testified that he sets Easton's schedule, but Ress directs his day-to-day work. Puglisi testified that he has encountered resistance from Ress when he has requested Easton to work with general assignment reporters. Although Puglisi has the authority to re-assign Easton, he usually finds a way to resolve any conflicts with Ress before they come to a head. Ress testified that she has asked Easton to work hours outside of his usual schedule, and he has not refused to do so. However, Ress also testified that she must clear it with Puglisi.

Puglisi testified that Moncheck receives her assignments from Ress. Moncheck's current position is her first in the television industry, and she has been in her position for about one year. Ress has 18 years' experience. From time to time, for the last half-hour or hour of her shift, Moncheck works in the newsroom, but otherwise she works exclusively with Ress.

The Employer has a telephone line and an e-mail address through which the public can contact Ress with consumer complaints or matters that may become the subject of Ress' investigative journalism. Ress testified that Moncheck screens these messages, and the two of them discuss the potential story value of each lead. Ress testified that she "certainly give(s) direction" to Moncheck, but also described their efforts as "collaborative."

The Employer asserts that Ress has the authority to hire, and has hired, both Moncheck and her predecessor. The record reveals that in each case, Ress was given a number of resumes to review, decided how many candidates she wanted to interview and interviewed those applicants. In the case of Moncheck's predecessor, Ress offered him the job before background checks could be conducted by the Employer. Nevertheless, the candidate was hired. After Ress

had interviewed the candidates, they were also interviewed by Puglisi, Caparizzo, or both. In each case, however, the candidate selected by Ress was hired.

ANALYSIS

Section 2(11) of the Act defines a “supervisor” as:

(A)ny individual having authority, in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

One is a statutory supervisor if he or she possesses the authority to engage in any one of the supervisory functions listed in Section 2(11). The burden of proving supervisory status rests with the party asserting it. NLRB v. Kentucky River Community Care, Inc., 532 U.S. 706, 713 (2001). In this case, the burden of proof rests with the Employer, since it asserts that the show producers, assignment manager, assignment editor and the investigative reporter are supervisors.

I find that the show producers are supervisors, based on their authority to assign and responsibly direct the work of others. There is minimal if any oversight of the weekend, 11:00 p.m. and overnight producers by the news director. The noon and evening show producers may be said to exercise somewhat less independent judgment than their counterparts because the news director is in the station while they are working. Even so, the news director spends most of the time in his office, and not in the newsroom. Despite the fact that the news director has the ultimate authority on matters discussed during the 9:00 a.m. and 1:00 p.m. news meetings, most of the day-to-day and minute-by-minute decisions made and directions given, especially those made during the newscast, are left to the producers. The producers exercise independent judgment in creating, and in departing from, the rundown. They direct anchors, reporters and desk assistants to write or re-write copy, and direct desk assistants to retrieve file or network

video. When the assignment manager or assignment editor is not present, the producers assume their responsibilities and their authority to assign and re-assign reporters and photographers.

Beattie's testimony suggests that, as a producer, she exercises less independent judgment in connection with the 6:00 p.m. newscast than that which Puglisi attributes to the producers. However, neither Beattie's testimony, nor that of her fellow producer Wohlleber, refutes the Employer's evidence that producers have the authority to change the rundowns, to assign and re-assign reporters and photographers in the absence of the assignment manager or the assignment editor, or to give direction to anchors and desk assistants in the performance of their duties. That some reporters may not always comply with Beattie's directions does not negate a finding of supervisory status for the producers.

As the Petitioner points out in its brief, this case is factually similar to KGTV, 329 NLRB 454 (1999). *See also*, KGW-TV, 329 NLRB 378 (1999). In these cases, the Board found television news producers to be non-supervisory because their authority to direct others stemmed from their own experience, skills or training. However, the Board decided these cases before the Supreme Court's decision in Kentucky River, *supra*. The Court in Kentucky River rejected the Board's finding that nurses were non-supervisory because they did not exercise independent judgment when they exercised "ordinary professional or technical judgment in directing less-skilled employees to deliver services in accordance with employer-specified standards." The court held that the Board's "categorical exclusion" of certain kinds of judgment was inconsistent with the Act. 532 U.S. at 713 – 716. After Kentucky River, the continuing validity of KGTV and KGW-TV is questionable. The Petitioner, however, suggests a different basis for finding the producers to be non-supervisory, citing the Board's finding in KGTV that producers were:

(p)art of an integrated production team, each member of which is independently capable of executing his own assignment...(t)hus, their relationship to other employees... is not supervisory, but rather one of coworkers involved in separate but sequential functions in the development of a single product.

329 NLRB at 457.

In Multimedia KDSK, Inc. v. NLRB, 271 F.3d 744 (8th Cir. 2001), a case decided after Kentucky River, the Court of Appeals initially enforced a Board Order requiring an employer in the television industry to bargain in a unit of producers, assignment editors and tape coordinators. In so doing, the Court stated that:

We need not be detained by the fact that a discrete portion of the reasoning supporting the (KGTV and KGW-TV) decisions rests on shaky ground following the Supreme Court's decision in Kentucky River ...

(KGTV's) conclusion that producers are not supervisors does not rest entirely upon the "professional expertise" argument. The Board separately enunciated the collaboration theory as an independent basis for denying producers supervisory status. There is no question that Kentucky River leaves the collaboration theory unscathed...

271 F.3d at 751.

However, the Court granted the employer's petition for rehearing *en banc*, vacated the opinion and judgment, and denied enforcement to the Board's Order.¹⁶ The Court found, on rehearing, that the Board's Order rested, not on a discrete "collaborative theory," but rather on the "professional expertise" analysis invalidated by the Supreme Court in Kentucky River. The Board did not seek remand, and has not since relied explicitly upon a "collaborative theory" to find employees non-supervisory.

¹⁶ 303 F.3d 896.

The record establishes that assignment manager Terry Cavanaugh and assignment editor Mike Hubel exercise independent judgment in the assignment of reporters and photographers.¹⁷ Significantly, they may change these assignments to respond to breaking news, without the approval of the news director. Moreover, both Cavanaugh and Hubel have authority to approve overtime. Such authority also supports a finding of supervisory status. Westinghouse Broadcasting Co., 188 NLRB 157 (1971); Westinghouse Broadcasting Co., 195 NLRB 339 (1972). I find that the assignment manager and the assignment editor are supervisors within the meaning of Section 2(11) of the Act.

The record evidence clearly shows that investigative reporter Priscilla Ress possesses authority to hire the investigative producer, or, at a minimum, that she effectively recommends hiring for this position. Venture Industries, 327 NLRB 918, 919-920 (1999). When the current investigative producer was hired, and when her predecessor was hired, Ress selected candidates to interview from among the applicants. Although the candidates may have also been interviewed by the news director, it remains that Ress decided which candidates she wanted, made her preference known, and her chosen candidate was hired on both occasions. Contrary to the Petitioner, Ress' involvement in the process was more than "routine, clerical, perfunctory or sporadic." Property Markets Group, 339 NLRB No. 31 (June 6, 2003), cited by the Petitioner, is therefore distinguishable.

The record also establishes that Ress, using independent judgment, assigns work to Easton and Moncheck and responsibly directs their work. Ress exercises a greater degree of independent judgment in assigning and directing work than do the show producers. Concerning

¹⁷ The news director may override Cavanaugh's judgments in the 9:00 a.m. and 1:00 pm. news meetings, but the record reveals that this is rare. By the time the first meeting begins, Cavanaugh has already made at least some of the assignments. On the weekend, Hubel works with even less oversight than does Cavanaugh.

the secondary indicia of supervisory authority, I note that Ress, unlike the reporters included in the unit, has her own office. I find that the investigative producer is a statutory supervisor, on the basis of her authority to hire or to effectively recommend hiring and on the basis of her authority to assign and responsibly direct the work of others, using independent judgment.

CONCLUSION

Based on the foregoing, I find that the show producers, the assignment manager, the assignment editor and the investigative reporter are supervisors within the meaning of Section 2(11) of the Act and as such, they shall be excluded from the unit set forth below.

APPROPRIATE UNIT

The following employees of the Employer constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All full-time and regular part-time reporters and anchors, desk assistants and investigative producers employed by the Employer at its 341 Northern Boulevard, Albany, New York facility, excluding: the managing editor, news director, assistant news director, chief meteorologist, sports director, show producers, assignment manager, assignment editor, investigative reporter and clerical employees, and all supervisors as defined in the Act.

There are approximately 21 employees in the unit found appropriate herein.

DIRECTION OF ELECTION

An election by secret ballot shall be conducted by the undersigned among the employees in the unit found appropriate, as described above, at the time and place set forth in the notices of election to be issued subsequently, subject to the Board's Rules and Regulations. Eligible to vote are those in the unit who were employed during the payroll period ending immediately preceding the date of this Decision, including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. Also eligible are employees engaged in an

economic strike which commenced less than 12 months before the election date and who retained their status as such during the eligibility period and their replacements. Those in the military services of the United States may vote if they appear in person at the polls. Ineligible to vote are employees who have quit or been discharged for cause since the designated payroll period, employees engaged in a strike who have been discharged for cause since the commencement thereof and who have not been rehired or reinstated before the election date, and employees engaged in an economic strike which commenced more than 12 months before the election date and who have been permanently replaced. Those eligible shall vote whether or not they desire to be represented for collective bargaining purposes by **NATIONAL ASSOCIATION OF BROADCAST EMPLOYEES AND TECHNICIANS-CWA, AFL-CIO.**

LIST OF VOTERS

In order to insure that all eligible voters may have the opportunity to be informed of the issues in the exercise of their statutory right to vote, all parties to the election should have access to lists of voters and their addresses, which may be used to communicate with them. *Excelsior Underwear, Inc.*, 156 NLRB 1236 (1966); *NLRB v. Wyman-Gordon Company*, 394 U.S. 759 (1969); *North Macon Health Care Facility*, 315 NLRB 359 (1994). Accordingly, it is hereby directed that within 7 days of the date of this Decision, 2 copies of an election eligibility list, containing the full names and addresses of all eligible voters, shall be filed by the Employer with the Acting Regional Director of Region Three of the National Labor Relations Board who shall make the lists available to all parties to the election. In order to be timely filed, such lists must be received in the Albany Resident Office, Room 342, Leo W. O'Brien Federal Building, Clinton Avenue and North Pearl Street, Albany, New York 12207 on or before **March 23, 2004**. No

extension of time to file the lists shall be granted except in extraordinary circumstances, nor shall the filing of a request for review operate to stay the requirement here imposed.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 Fourteenth Street, NW, Washington, DC 20570. This request must be received by the Board in Washington by **March 30, 2004**.

DATED at Buffalo, New York this **16th** day of **March, 2004**.

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